

TOMBSTONE MUNICIPAL COURT

Cochise County, Arizona

State of Arizona, Plaintiff

No. TR2019000043

v.

JACK FEATHER, Defendant

**RESPONSE TO MOTION TO DISQUALIFY
TOMBSTONE CITY ATTORNEY FROM
PROSECUTION OF THIS CASE AND FOR
DISMISSING ALL PENDING CHARGES**

The State of Arizona, through P. Randall Bays, the City Attorney for Tombstone responds and states as follows:

- 1) A.R.S. § 9-499.01 provides:
Charter cities and general law cities, whether incorporated as cities pursuant to § 9-101 or having assumed a city organization pursuant to § 9-271, shall be vested with all the powers of incorporated towns as set forth in this title, in addition to all powers vested in them pursuant to their respective charters, or other provisions of law relating to cities and towns.
- 2) Tombstone is a Charter form of City Government established on February 21, 1881, well before Arizona became a state.
- 3) ARTICLE V, Section 3 of the Tombstone City Charter states in part: "[i]t shall be the duty of the City Attorney to prosecute in behalf of the Mayor and Common Council of the City of Tombstone all criminal cases of or violation of city ordinances and resolutions pending in the Recorder's Court, and in all other Courts upon appeal thereto and to attend to all suits, matters and things in which the city may legally be interested."
- 4) ARTICLE V, SECTION 12 of the Tombstone City Charter states: "All prosecutions brought before the said Court for the violation of any ordinance, resolution, bylaw, rule or regulation of any of the authorities of a said city, shall be brought and prosecuted in the name of the Mayor and Common Council of the City of Tombstone. In case of the absence from the city, or the inability to act of the Recorder, he may select and deputize any one of the Justices of the Peace in said city to act in his place as Judge of said Court, which Justice, during the time of his substitution, shall have the same power and perform the same duties as the said Judge of said Court. But the said substituted Justice shall receive no pay or compensation from the city for his services. All fines collected in said Court shall be paid by said Judge into the city treasury, and placed to the credit of the Salary Fund."
- 5) A.R.S. § 22-402 states: "Every court established in a city incorporated under the provisions of title 9, chapter 2, article 51 or incorporated under the provisions of a special act or charter, has jurisdiction of all cases arising under the ordinances of the city or town, and has

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jurisdiction concurrently with justices of the peace of precincts in which the city or town is located, of violations of laws of the state committed within the limits of the city or town."

6) "The City Attorney is the appropriate person to prosecute violations of the State law committed within the corporate limits of the City over which the concurrent jurisdiction of the City Court has been invoked. *City of Phoenix v. Coulter*, 110 Ariz. 111, 515 P.2d 856, 857 (1973) (noting statutory authorization for city attorney to prosecute violations of state law committed within corporate limits).

WHEREFORE, the Defendant's Motion should be DENIED.

RESPECTFULLY submitted this 31st day of August, 2019.

BAYS LAW PC



Paul Randall Bays
City Attorney, City of Tombstone

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